

the Federal Railroad Safety Act of 1970, to explain what State law causes of action for personal injury, death or property damage are not preempted. It clarifies that 49 U.S.C. §20106 does not preempt State law causes of action where a party has failed to comply with the Federal standard of care established by a regulation or order issued by the Secretary of Transportation or the Secretary of Homeland Security, its own plan or standard that it created pursuant to a regulation or order issued by either of the Secretaries, or a State law, regulation or order that is not incompatible with 49 U.S.C. §20106(a)(2).

The modified language also contains a retroactivity provision, which clarifies that 49 U.S.C. §20106 applies to all pending State law causes of action arising from activities or events occurring on or after January 18, 2002, the date of the Minot, North Dakota derailment. Finally, this provision indicates that nothing in 49 U.S.C. §20106 creates a Federal cause of action on behalf of an injured party or confers Federal question jurisdiction for such State law causes of action.

SUBTITLE C—OVER-THE-ROAD BUS AND TRUCKING SECURITY

Section 1531. Over-the-Road Bus Security Assessments and Plans

There is no comparable House provision.

Section 1447 of the Senate bill requires the Secretary of Homeland Security to establish a program within the Transportation Security Administration (TSA) to make grants to private over-the-road bus operators and over-the-road bus terminal operators for the purposes of improving bus security. The provision stipulates that the Secretary may not make grants to over-the-road operators until the operators have submitted security plans and provided additional information that the Secretary may require. Section 1447 also requires the Secretary to undertake a bus security assessment, that would include an assessment of: the existing over-the-road bus security grant program; actions already taken to address identified security issues by both public and private entities and recommendations on whether additional safety and security enforcement actions are needed; whether additional legislation is needed to provide for the security of Americans traveling on over-the-road buses; the economic impact that security upgrades of buses and bus facilities may have on the over-the-road bus transportation industry and its employees; ongoing research and the need for additional research on over-the-road bus security, including engine shut-off mechanisms, chemical and biological weapon detection technology, and the feasibility of compartmentalization of the driver; industry best practices to enhance security; and school bus security, if the Secretary deems it appropriate.

The Conference substitute requires the Secretary to issue regulations, not later than 18 months after the date of enactment, to require high-risk over-the-road bus operators to conduct vulnerability assessments and develop, submit and implement approved security plans. It allows the Secretary to establish a security program for over-the-road bus operators not assigned to a high-risk tier, including guidance on vulnerability assessments and security plans, and a review process, as appropriate. The Conference substitute also requires the Secretary to provide technical assistance and guidance on components of vulnerability assessments and security plans, in addition to relevant threat information necessary for preparing such assessments and plans. It requires the Secretary to review the vulnerability assessments and security plans not later than 6 months upon receipt, and approve such assessments and plans meeting the established

requirements. The Conference substitute requires the Secretary to assign each over-the-road bus operator to a risk based tier and operators may be reassigned by the Secretary based on changes in risk. Finally, it requires that the over-the-road bus operators evaluate the adequacy of the assessments and plans submitted to the Secretary not later than 3 years after the date on which the assessment or plan was submitted, and at least once every five years thereafter.

Section 1532. Over-the-Road Bus Security Assistance

There is no comparable House provision.

Section 1447 of the Senate bill requires the Secretary of Homeland Security to establish a program within TSA to make grants to private over-the-road bus operators and over-the-road bus terminal operators for the purposes of emergency preparedness drills and exercises, protecting high risk assets, counter-terrorism training and other security-related actions. This provision requires the Secretary, in making grants, to take into consideration security measures that over-the-road bus operators have taken since September 11, 2001. The Secretary may not make grants to private operators until the operators have submitted security plans and provided additional information that the Secretary may require. The provision further stipulates that the Secretary must submit a report to Congress and must consult with industry, labor and other groups. This provision authorizes the following funding: \$12 million for FY 2008, \$25 million for FY 2009, and \$25 million for FY 2010. Section 1447 requires the Secretary to select the grant recipients, award, and distribute grants to eligible recipients.

The Conference substitute adopts the Senate language, with modifications. It requires the Secretary to establish a grant program and stipulates that the funds may be used for one or more of the following: construction and modifying terminals to increase security; modifying over-the-road buses to increase their security; protecting the driver of an over-the-road bus; acquiring or improving equipment to collect, store and exchange passenger and driver information with ticketing systems and for links with government agencies for security purposes; installing cameras and video surveillance equipment; establishing and improving emergency communications systems; implementing and operating passenger screening programs; developing public awareness campaigns for over-the-road bus security; operating and capital costs associated with over-the-road bus security; detection of chemical, biological, radiological or explosives, including the use of canine patrols; overtime reimbursement for security personnel; live or simulated security exercises; operational costs to hire, train and employ security officers; development of assessments or security plans; and other improvements deemed appropriate by the Secretary. The Conference substitute requires the Secretary to select the grant recipients and award the grants, but would require that, within 90 days following the date of enactment, that the Secretary and the Secretary of Transportation jointly determine the most effective and efficient means to distribute grants awarded under this section to grant recipients. Dependent on the result of this determination, one of the two Secretaries would be authorized to distribute the grants awarded under this section.

The Conference substitute also stipulates eligibility, limitations on uses of funds, annual reports, and consultation with stakeholders. It authorizes \$12 million for FY 2008 and \$25 million for each of Fiscal Years 2009 through 2011.

Section 1533. Over-the-Road Bus Exercises

Section 101 of the House bill provides for grants to fund exercises to strengthen terrorism preparedness. Sections 301 and 302 of the House bill strengthen the design of the National exercise program to require it to enhance the use and understanding of the Incident Command System (ICS) by requiring that the National Exercise Program include model exercises for use by State, local and tribal governments. Section 1101 of the House bill requires the Secretary of Homeland Security to establish a program to enhance private sector preparedness for acts of terrorism and other emergencies and disasters, including the development and the conducting of training and exercises to support and evaluate emergency preparedness, response plans, and operational procedures.

There is no comparable Senate provision.

The Conference substitute adopts a provision based on elements of the House provisions that require the Secretary to establish a program for conducting security exercises for over-the-road bus transportation to prevent, prepare for, mitigate, respond to, and recover from acts of terrorism. The program shall include Federal, State, local agencies and tribal governments; over-the-road bus operators and terminal owners and operators; governmental and nongovernmental emergency response providers and law enforcement agencies; and other applicable entities. The program calls for consolidation of existing security exercises administered by the Department of Homeland Security, TSA and the Department of Transportation, as appropriate, and shall be comprised of live exercises tailored to the needs of the recipients, coordinated with appropriate officials, inclusive of over-the-road bus frontline employees, and consistent with the National Incident Management System, the National Response Plan and other related national initiatives, including the National Exercise Program. The exercises shall be evaluated by the Secretary and the ensuing best practices shall be shared with appropriate stakeholders, and used to develop recommendations of appropriate action.

The Conference intends for there to be one primary over-the-road bus security exercises program within the Federal government administered by TSA, but are including the waiver authority to ensure that any DOT motor carrier safety exercises that have a nexus with security are not automatically consolidated into this program. The Conference expects that the consolidation of exercises that primarily relate to safety would only occur with the concurrence of the Secretary of Transportation and the Secretary of Homeland Security.

Section 1534. Over-the-Road Bus Security Training Program

There is no comparable House provision.

While there is no comparable Senate provision, Section 1447 of the Senate bill provides grants to over-the-road bus operators and over-the-road bus terminal operators and owners for the purposes of improving bus security, including training employees in recognizing and responding to security risks, evacuation procedures, passenger screening procedures, and baggage inspection and hiring and training security officers.

The Conference substitute adopts a new provision that would require, not later than 6 months after enactment, the Secretary of Homeland Security and TSA to develop and issue regulations for a bus training program to prepare the over-the-road bus frontline employees, as defined in section 1501 of the Conference substitute, for potential security threats and conditions. In developing the regulation, the Secretary shall consult with the appropriate stakeholders including law